

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JAMES CURTIS KERN,

Plaintiff,

v.

A.F. ALPHONSO,

Defendant.

No. 1:24-cv-01195-KES-SAB (PC)

ORDER VACATING FINDINGS AND  
RECOMMENDATION AND GRANTING  
PLAINTIFF ONE FINAL OPPORTUNITY TO  
FILE A SECOND AMENDED COMPLAINT

(ECF Nos. 9, 10)

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the instant action on October 2, 2024. (ECF No. 1.)

On October 21, 2024, the Court screened Plaintiff's complaint, found not cognizable claims, and granted Plaintiff thirty days to file an amended complaint. (ECF No. 5.)

Plaintiff filed an amended complaint on November 4, 2024. (ECF No. 8.) On November 25, 2024, the Court screened the first amended complaint and issued Findings and Recommendations recommending the instant action be dismissed for failure to state a cognizable claim for relief. (ECF No. 9.)

Plaintiff filed objections on December 9, 2024. (ECF No. 10.) In his objections, Plaintiff provides additional factual details that were not presented in the first amended complaint and it is appears that Plaintiff may be able to present additional facts in support of a claim for deliberate

indifference against Dr. state a cognizable claim for relief based on the additional allegations. Thus, given that pro se complaints should be pro se complaints should be liberally construed and “may only be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts in support of his [or her] claim[.]” Mangiaracina v. Penzone, 849 F.3d 1191, 1195 (9th Cir. 2017), the Court will vacate the pending Findings and Recommendations and grant Plaintiff one final opportunity to amend the complaint. However, Plaintiff is advised that the Court makes no ruling as the merits of any claims presented in a second amended complaint. Plaintiff is further advised that the Court cannot refer to a prior pleading in order to make Plaintiff’s amended complaint complete. Local Rule 220 requires that an amended complaint be complete in itself without reference to any prior pleading. This requirement exists because, as a general rule, an amended complaint supersedes the original complaint. See Ramirez v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) (“an ‘amended complaint supersedes the original, the latter being treated thereafter as non-existent.’ ”).

Based on the foregoing, it is HEREBY ORDERED that:

1. The Findings and Recommendations issued on November 25, 2024 are VACATED;
2. Plaintiff shall file a second amended complaint within thirty days from the date of service of this order; and
3. Failure to comply with this order will result in a recommendation for dismissal of the action.

IT IS SO ORDERED.

Dated: **December 10, 2024**



STANLEY A. BOONE  
United States Magistrate Judge